

November 6, 1996

D.P.U. 96-59

Petition of Massachusetts Electric Company, pursuant to G.L. c. 164 §§ 69H, 69I, 76, 94, 94B and 94G, and the Department's Regional Integrated Resource Plan procedures, for review of the process by which additional energy resources are planned, solicited and procured by Massachusetts Electric Company.

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ORDER ON OFFER OF SETTLEMENT

I. INTRODUCTION

On June 3, 1996, pursuant to the regional integrated resource procedures adopted in Regional IRP Procedures, D.P.U. 93-138/157-A (1994) ("Regional IRP Procedures"), Massachusetts Electric Company ("MECo"), Nantucket Electric Company ("Nantucket"), the Narragansett Electric Company in Rhode Island, Granite State Electric Company in New Hampshire, and New England Power Company ("NEP")¹ (collectively "Companies"), filed their regional integrated resource plan ("Regional IRP") with the Department of Public Utilities ("Department").² The petition was docketed as D.P.U. 96-59.

Pursuant to notice duly issued, a public hearing was held on June 26, 1996 at the Department's offices in Boston.³ The Attorney General of the Commonwealth ("Attorney General") intervened pursuant to G.L. c. 12, § 11E. In addition, the Department granted the

¹ NEP is a wholly owned subsidiary of New England Electric System that provides substantially all the electric requirements of its retail electric affiliates noted above (Massachusetts Electric Company D.P.U. 96-59, Regional IRP Filing at 1-1). In addition, NEP serves, at wholesale, a number of municipal and other small utility systems, and a few large industrial customers (*id.*).

² Massachusetts Electric Company/New England Power Company, D.P.U. 93-138 (1993) concerned, *inter alia*, an application of MECo and NEP requesting that the Department: (1) approve the Memorandum of Understanding ("MOU") setting forth a plan for the coordinated regional review of the resource planning and procurement process of New England Electric System and its subsidiaries; and (2) exempt MECo and NEP from the integrated resource management ("IRM") regulations, *See* 220 C.M.R. §§ 10.00 *et seq.* The MOU was approved by the Department in D.P.U. 93-138, and the Department established the Regional IRP Procedures pursuant to D.P.U. 93-138/157A.

³ The Regional IRP Procedures state that the Department may hold adjudicatory hearings and technical sessions as the public interest requires, beginning approximately three months after filing of the Regional IRP, to allow time for settlement negotiations to take place (Regional IRP Procedures at 9-10).

petitions for leave to intervene of the Conservation Law Foundation ("CLF") and Endless Energy Corporation ("Endless Energy"). The Department also granted Eastern Edison Company limited participant status. On August 6, 1996, pursuant to the Regional IRP Procedures, the Department appointed a settlement intervention staff ("SIS") as a party.

On September 30, 1996, the Attorney General, CLF, SIS and the Companies (collectively "Parties") filed an Offer of Settlement and a Joint Motion for Approval of Offer of Settlement and Suspension of Procedural Schedule.⁴ On October 23, 1996, the Parties resubmitted an Offer of Settlement, with all attachments, correcting typographical errors in the Settlement filed on September 30, 1996. In this Order, the Department addresses the October 23, 1996 resubmitted Offer of Settlement ("Settlement"). The Parties move that the Department approve the Settlement on or before November 6, 1996.⁵

II. THE SETTLEMENT

The Settlement states that it resolves all issues among the parties relating to the long range forecast submitted pursuant to Mass. Gen. Laws c. 164, § 69I and the Regional IRP Procedures (Settlement at 1). The Parties stipulate that the Settlement, all attachments to the Settlement, and the Companies' IRP filing are incorporated by reference (id. at 2).

Under the terms of the Settlement, the parties agree that MECo's long range forecast, with the modifications set forth in the Settlement, meets the statutory and regulatory requirements necessary to construct transmission and substation facilities (id.).⁶ MECo agrees to include

⁴ Endless Energy neither signed nor objected to the Settlement.

⁵ On October 30, 1996, the Parties extended the date requested for approval of the Settlement from November 1, 1996 to November 6, 1996.

(continued...)

targeted demand side management ("DSM") and distributed generation considerations in distribution system upgrade planning, and will file a more detailed proposal with its conservation cost factor filing in the fall of 1996 (id.).

The Settlement states that the Parties acknowledge that the Department has proposed rules in Electric Industry Restructuring, D.P.U. 96-100 (1996) that are intended, among other things, to promote competition in the sale of electric generation services (id. at 3). The Parties state that they are of the opinion that during the planning period at issue in this proceeding,⁷ supply side resources will be competitively acquired by consumers instead of planned for in an integrated least cost manner by the Companies (id.). Therefore, the Parties have agreed it is proper that the Regional IRP entails no additional resources or purchase commitments requiring regulatory approval (id.).

The Settlement includes a contract that would preapprove certain expenditures in MECo's DSM programs in 1997 ("DSM Preapproval Contract") (id. at 3, Att. 1,

(...continued)

The Settlement provides that, each time MECo proposes to construct a facility as defined in M.G.L. c. 164, § 69G, MECo would file a supplement to the forecast presented in its Regional IRP for Department approval (Settlement at 2).

⁷ As part of this proceeding, the Companies must file, among other things, a demand forecast and resource inventory projections for fifteen years. Regional IRP Procedures at 5, 6.

Exhs. 1-5).⁸ The Parties assert that the DSM Preapproval Contract will allow for continuity in the delivery of DSM during the period that the Department finalizes proposed rules in D.P.U. 96-100 (id. at 3-4, Att. 1).

The Settlement provides for the redesign of current residential DSM programs and pilots as four new initiatives (id., Att. 1, at 5-7). The Efficient Home Products program will focus on market driven/market transformation efforts in the home products markets (id.).⁹ The In-Home Services program will address market barriers, support product initiatives, and modify existing programs during 1997 to streamline administration, marketing, and customer education efforts (id., Att. 1, at 5-6). The New Home Construction programs will include payments for installation of measures that exceed building code requirements, and initiatives to encourage high efficiency appliance choices in new homes (id., Att. 1, at 6). The Education program is intended to supplement the above-mentioned programs with education information and expertise, and will include an initiative to gather and disseminate information to customers about existing financing options available from outside institutions for customer investment in DSM and other renewable technologies (id., Att. 1, at 7).

The Settlement also provides for the continuation of commercial and industrial DSM programs (id.). These programs include the Design 2000, the Energy Initiative and the Small

⁸ The projected spending level for the 1997 DSM programs under the terms of the Settlement is approximately \$52.7 million (id. at 3, Att. 1, Exh. 2).

⁹ MECo will modify existing programs to address changing market conditions and add new product initiatives (Settlement, Att. 1, at 5).

Commercial and Industrial ("C&I") Program (id.).¹⁰ If the Design 2000 budget is not sufficient to meet the funding requirements of the new energy efficiency initiatives, MECo states that it will shift money from the Energy Initiative budget into the Design 2000 budget (id.). MECo states that it will notify the Department and other parties of any "major adjustment" of money from the Energy Initiative budget into the Design 2000 budget (id.).¹¹

The Settlement states that the DSM programs described in the DSM Preapproval Contract (except for the Residential Complementary and Super Efficient Refrigerator Programs) shall also be offered to customers of Nantucket (id. at 4). In addition, in the Residential Lighting Program, customers may purchase lighting products at Nantucket's offices with the same rebate offered to MECo customers (id.). Further, Nantucket's Conservation Charge factors shall be set at the same level as the MECo Conservation Charge factors (id.).

¹⁰ Design 2000 is an incentive program for new, renovated or remodeled C&I buildings, the replacement of failed equipment, and new energy efficiency initiatives (Settlement, Att. 1, at 7). The Energy Initiative program is a C&I energy management program designed to promote the direct installation of energy efficient measures in all existing buildings regardless of billing demands or kilowatthour usage (id.). The Small C&I Program involves the installation of energy efficient measures for MECo's smaller C&I customers, those having less than 100 kilowatts of demand or 300,000 kilowatthours of annual energy (id.).

¹¹ The Settlement defines a "major adjustment" or supplement as a change to an individual rebate level greater than twenty percent of the original level or an adjustment in program spending that would affect the total spending in the commercial and industrial or residential sectors more than twenty percent (Settlement at Att. 1, at 10). Within two weeks of the filing of a major adjustment or supplement, the Parties may petition the Department for a hearing (id. at Att. 1, at 11). In addition, under the terms of the Settlement, if the Department does not notify MECo of the need of a more in-depth review a major adjustment or supplement within thirty days of its filing, the adjustment or supplement shall be deemed approved (id.).

The Settlement states that based on projected kilowatt and kilowatthour savings, MECo will collect an estimated incentive of \$4.0 million (id. at 3, Att. 1, at 8, 9, Exh. 1). The Settlement also states that the costs of the DSM programs and the incentive to be paid to MECo will be recovered through its Conservation Charge (id. at 3, Att. 1, at 8, 9, Exh. 5). Further, the Settlement states that MECo will file with the Department, MECo's results of its DSM programs for the prior year, on or before July 15 1998, together with the calculation of any related bonus or penalty (id., Att. 1, at 8, 9).

The Settlement states that MECo shall provide the Department and the Parties with a performance measurement report regarding the programs implemented pursuant to the DSM Preapproval Contract, no later than July 15, 1998 (id., Att. 1, at 9). The Settlement states that the DSM Preapproval Contract shall be in effect from January 1, 1997 to December 31, 1997, or until it is superseded by a new contract that has been filed with and approved by the Department (id., Att. 1, at 7, 8). Further, the Settlement states that termination of the DSM Preapproval Contract shall not become effective until 120 days from the date of notice of termination to MECo (id., Att. 1, at 10-11). According to the Settlement, during the term of the DSM Preapproval Contract, MECo may adjust and supplement its DSM programs, the program components, rebate levels, and any program measures (id., Att.1, at 9).

The Settlement states that, if proceedings in New Hampshire or Rhode Island concerning MECo's Regional IRP filing have an outcome that is inconsistent with this Settlement, then the Settlement will be reopened only to the extent necessary to resolve such inconsistencies in accordance with the MOU (id. at 5, Att. 3). In addition, the Settlement provides that, other than

as expressly stated, the Settlement (1) establishes no principles and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation, and (2) shall not in any respect constitute a determination by the Department of the merits of any issue in this or any subsequent proceeding (id. at 5). The Settlement also provides that the content of the negotiations upon which it is based shall be privileged, and that all offers of settlement shall be without prejudice to the position of any party or participant presenting such offer (id.). Should the Department not approve the Settlement in its entirety, the Settlement provides that it shall be deemed withdrawn and not constitute a part of the record in any proceeding or used for any purpose (id. at 5-6).

III. ANALYSIS AND FINDINGS

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and public policy.¹² See Western Massachusetts Electric Company, D.P.U. 96-8-CC, at 6 (1996); Massachusetts Electric Company, D.P.U. 94-112, at 6 (1994); Eastern Edison Company, D.P.U. 94-110, at 5 (1994); Western Massachusetts Electric Company, D.P.U. 94-12, at 4 (1994); Fitchburg Gas and Electric Company, D.P.U. 92-181, at 12 (1993).

¹² In the instant proceeding, the Department moves into evidence (1) MECo's Regional IRP filing submitted by the Companies to the Department on June 3, 1996, including all attachments, exhibits, and subsequent amendments, updates, and revisions, and (2) the Settlement and all attachments, exhibits and subsequent amendments that have been filed as of the date of this Order.

The Settlement in this proceeding represents agreement among a broad range of interests. It is appropriate to accept a proposed settlement agreement in a regional IRP proceeding if the intended purpose of the Regional IRP Procedures -- to implement procedures by which additional resources are planned, solicited, and procured to meet an electric company's obligation to provide reliable electrical service to ratepayers at the lowest total cost to society -- would not be advanced by a continued review of the current filing (Regional IRP Procedures at 1). The Department notes that the interests of ratepayers are served by a regional IRP process that is flexible in the means employed to establish the need for and the cost of additional resources.

The Department finds that the Settlement is reasonably consistent with the objective of the Regional IRP Procedures, and thus that continuing to review the Companies' Regional IRP filing at this time would be unlikely to yield any clear benefits to ratepayers. Therefore, the Department finds that the interest of ratepayers would best be advanced through acceptance of the Settlement. Accordingly, the Department approves the proposed Settlement.

Our acceptance of this Settlement does not constitute a determination or finding on the merits of any particular aspect of the Companies' Regional IRP filing and should not be interpreted as establishing precedent for further Regional IRP filings.

IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement and Suspension of Procedural Schedule, filed with the Department on October 23, 1996, by Massachusetts Electric Company, Nantucket Electric Company, the Attorney General, Conservation Law Foundation, and Settlement Intervention Staff, be and hereby is approved.

By Order of the Department,

John B. Howe, Chairman

Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).